

Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

MONIQUE CHARLENE TILLMAN and  
ERIC BRANCH,

Plaintiffs,

v.

JARED WILLIAMS, JOSHUA MCKENZIE,  
HENRY KNAACK, TACOMA POLICE  
CHIEF DONALD RAMSDELL, THE CITY  
OF TACOMA, SIMON PROPERTY  
GROUP, L.P., UNIVERSAL PROTECTION  
SERVICE, LP, and JOHN and JANE DOES  
1-10,

Defendants

No. 3:16-cv-05794-RBL

MALL DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:  
DECEMBER 29, 2017

Simon Property Group, L.P., Universal Protection Service, LP, and Henry Knaack ("the Mall Defendants") move for summary judgment on all claims against them.

**FACTUAL BACKGROUND**

This case arises out of an arrest that occurred at the Tacoma Mall. Simon manages the property and Universal provides security officers at the mall. Simon pays to have off-duty Tacoma police officers provide a police presence at the mall on busy Friday and Saturday

1 nights. (Decl. of Geoffrey M. Grindeland, Ex. A, (Simon’s Dep. 29:3–17); Ex. B (Officer  
 2 Williams Dep. 74:17–75:2).) In this context, “off duty” is a term of art that means officers are  
 3 paid directly by a private entity. In some jurisdictions, a private entity pays the police  
 4 department instead of the officers, who are then referred to as “extra-duty officers.” The only  
 5 distinction between “off-duty officers” and “extra-duty officers” is how they are paid by the  
 6 private entity—directly or through the police department.

7 “Off duty” doesn’t mean the officer is acting in a personal capacity rather than an  
 8 official capacity. In fact, the Tacoma Police Department maintains close control of off-duty  
 9 officers. Off-duty employment must be approved by the Tacoma Police Department,  
 10 (Grindeland Decl., Ex. C (TPD Off-Duty Policy P2.1.10), and officers are assigned off-duty  
 11 shifts by a Tacoma police detective (Williams Dep. 50:2–7, 50:18–51:6). The off-duty officers  
 12 wear their police uniforms and drive TPD patrol vehicles. (Williams Dep. 58:18–59:6, 61:23–  
 13 62:2.) The Police Department forbids them from “performance of tasks other than those of a  
 14 Police nature while in Police uniform.” (TPD Off-Duty Policy.)

15 These off-duty officers aren’t supervised or directed by Simon or Universal.  
 16 (Grindeland Decl., Ex. D (Sadler Dep. 69:10–70:2, 136:10–137:18); Simon’s Dep. 19:14–  
 17 20:12, 31:2–23; Grindeland Decl., Ex. E (Universal’s Dep. 118:25–119:3, 123:13–16,  
 18 125:15–19); Williams Dep. 68:18–24.) Instead, they remain “responsible to the direction of  
 19 on-duty TPD Supervisors.” (TPD Off-Duty Policy.) They must also “adhere to all rules,  
 20 regulations, and orders governing conduct . . . while on duty.” (*Id.*)

21 Off-duty officers don’t have any role in enforcing mall rules. (Sadler Dep. 75:24–  
 22 77:14; Simon’s Dep. 28:3–17.) Their role is to provide a police presence and enforce the law.

(Sadler Dep. 64:19–65:9; Simon’s Dep. 28:3–17; Williams Dep. 62:20–63:2, 170:19–171:3.)

In fact, they “are expected to effectively and properly handle all violations of the law that they may encounter while working in an off-duty capacity, including any violations that may be committed by the business for which they are employed (i.e., code and/or liquor violations).” (TPD Off-Duty Policy.)

Although paid by Simon during their off-duty shifts at the mall, their “primary duty, obligation, and responsibility . . . is to the Tacoma Police Department.” (*Id.*) The officers “are subject to call for duty at any time.” (*Id.*) They carry a police radio and check in with Police Dispatch when they start their shift. (Williams Dep. 37:16–22, 80:1–8.) The off-duty officers can be required to leave mall property at any time if dispatched to calls elsewhere in the city. (TPD Off-Duty Policy; Williams Dep. 87:7–23.)

Off-duty officers follow Tacoma Police Department training and policies. (TPD Off-Duty Policy; Sadler Dep. 136:10–137:18; Williams Dep. 62:17–19, 69:18–70:9, 169:3–7.) Neither Simon nor Universal direct the activities of off-duty officers, who instead maintain their complete discretion as police officers while on mall property. (Sadler Dep. 69:10–70:2, 75:7–15; Williams Dep. 62:17–63:2, 68:18–24, 71:13–72:1.)

### **The Arrest**

On a Saturday evening in May 2014, Security Officer Knaack, a Universal employee, saw Plaintiffs Monique Tillman and Eric Branch riding their bicycles in the mall parking lot. (Decl. of Henry Knaack ¶ 3.) They were impeding traffic and causing a disturbance by yelling and swearing at drivers who were honking at them to get out of the way. (*Id.*) Among other

1 concerns, Security Officer Knaack was worried the Plaintiffs might be struck by a car as  
2 frustrated motorists tried to get around them. (*Id.* ¶ 4.)

3 Although the Plaintiffs now deny causing a disturbance, it's undisputed that when  
4 Security Officer Knaack approached, he initially asked, "What are you guys doing? Where  
5 are you going?", or words to that effect. (Knaack Decl. ¶ 4; Grindeland Decl., Ex. F (Tillman  
6 Dep. 153:21–154:13); Grindeland Decl., Ex. G (Branch Dep. 184:25–185:11).) When Ms.  
7 Tillman responded by yelling and cursing at him, Security Officer Knaack directed the  
8 Plaintiffs to leave via the nearest exit, which was immediately to the north. (Knaack Decl.  
9 ¶¶ 5–6.) Mr. Branch admits Security Officer Knaack told the Plaintiffs to leave the property.  
10 (Branch Dep. 94:17–22, 184:8–185:22.) It's also undisputed that Ms. Tillman responded by  
11 yelling "Fuck off!" at Security Officer Knaack before she and Mr. Branch rode away. (Branch  
12 Dep. 184:18–24, 185:5–186:1; Tillman Dep. 155:3–8; Knaack Decl. ¶ 7.)

14 Instead of leaving via the nearby north exit, the Plaintiffs continued riding east through  
15 the parking lot. (Branch Dep. 94:17–22, 185:20–186:1; Knaack Decl. ¶ 7.) As Mr. Branch  
16 admitted, Security Officer Knaack "had told us to exit but not in the way that we were already  
17 exiting." (Branch Dep. 94:17–22.)

19 Security Officer Knaack used his radio to let Mall Dispatch, other security officers, and  
20 off-duty police officers know he was dealing with two teenagers on bikes who were causing  
21 a disturbance and refusing to leave the property. (Knaack Decl. ¶ 9.) The Plaintiffs now allege  
22 they were planning to leave the property via an east exit, but Security Officer Knaack had no  
23 way of knowing that. (*Id.* ¶ 8.) Ms. Tillman had told him to "fuck off" when he directed them  
24 to leave and, as far as he knew, they were continuing to ride around the mall parking lot. (*Id.*)

1 It seemed unlikely to him they were leaving the property by riding their bicycles east, because  
2 the I-5 freeway was that direction. (*Id.*)

3 Tacoma Police Officer Jared Williams, who was working as an off-duty officer that  
4 night, responded to the radio call. (Williams Dep. 146:4–23.) He was wearing his police  
5 uniform and driving a marked police vehicle. (Williams Dep. 21:9–15, 61:23–62:2.) Officer  
6 Williams explained that he exercised his discretion “to take enforcement action and trespass  
7 [Ms. Tillman].” (Williams Dep. 156:11–14, 156:23–157:6.) As Plaintiffs’ own police expert  
8 acknowledges, this is a traditional police function. (*See* Grindeland Decl., Ex. H (Van  
9 Blaricom Dep. 94:20–95:10); *see also* Williams Dep. 133:17–134:2.)

11 The Plaintiffs heard Officer Williams’ siren and saw his lights, so they stopped.  
12 (Branch Dep. 95:8–96:2; Tillman Dep. 157:12–158:12; Dkt. #38-6 (Surveillance Video).)  
13 They recognized he was a police officer and understood he was effecting a stop. (Branch Dep.  
14 186:2–187:3; Tillman Dep. 157:20–158:2.) When Officer Williams got out of his vehicle to  
15 speak to the Plaintiffs, Ms. Tillman was immediately hostile. (Knaack Decl. ¶ 11.) She yelled,  
16 “What the fuck do you want?”, (*id.*), and asked if he stopped them because they were black,  
17 (Tillman 163:16–164:4). When Officer Williams asked for her name, she said, “Kiss my ass!”  
18 and tried to ride away. (Branch Dep. 190:3–23; Tillman Dep. 165:10–22; Knaack Decl. ¶ 12;  
19 Williams Dep. 245:19–24.)

21 Officer Williams grabbed Ms. Tillman by the arm to try to restrain her, but she resisted  
22 by trying to pull away. (Williams Dep. 185:22–24; Knaack Decl. ¶ 13.) Ms. Tillman denies  
23 resisting, even though her actions were caught on video. She admits, however, that she used  
24 her legs “to stop him from trying to slam my face into the concrete.” (Tillman Dep. 174:25–  
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1 175:3.) Officer Williams told her repeatedly throughout this incident to stop resisting.  
2 (Knaack Decl. ¶ 13.)

3 Mr. Branch got off his bike, moved toward Officer Williams, and yelled, “Get the fuck  
4 off my sister!” (Knaack Decl. ¶ 14; Williams Dep. 189:4–11.) It appeared Mr. Branch was  
5 going to assault Officer Williams. (Knaack Decl. ¶ 14.) Security Officer Knaack was  
6 concerned for the safety of Officer Williams, who already had his hands full trying to control  
7 Ms. Tillman, so Security Officer Knaack grabbed Mr. Branch by the sweatshirt to hold him  
8 back. (*Id.*; Surveillance Video at 1:24–130.)

9  
10 While holding Ms. Tillman against a car with his right hand, Officer Williams drew his  
11 Taser with his left hand, pointed it at Mr. Branch, and told him to back off or he would be  
12 “Tased.” (Branch Dep. 101:2–8; Knaack Decl. ¶ 14; Williams Dep. 189:12–25.) Mr. Branch  
13 complied, stepping back and sitting down, so Officer Williams didn’t have to use his Taser.  
14 (Branch Dep. 101:2–17; Knaack Decl. ¶ 14; Williams Dep. 189:20–25; Surveillance Video at  
15 1:30–1:45.)

16  
17 Officer Williams tried to get Ms. Tillman’s hands behind her back, but she continued  
18 resisting. (Knaack Decl. ¶ 15.) Mr. Branch stood up and tried to move toward Officer Williams  
19 again, so Security Officer Knaack pushed Mr. Branch back with a hand to his chest once or  
20 twice. (*Id.*) Security Officer Knaack pointed to the ground and Mr. Branch sat back down. (*Id.*;  
21 Surveillance Video at 1:45–2:05.)

22  
23 The reason Security Officer Knaack tried to prevent Mr. Branch from approaching  
24 Officer Williams was to protect Officer Williams, but he also realized this was safest for Mr.  
25 Branch and Ms. Tillman, too. (Knaack Decl. ¶ 16.) If Mr. Branch had fled the scene instead of  
26

1 approaching Officer Williams, however, Security Officer Knaack wouldn't have tried to stop  
2 him. (*Id.*)

3 Officer Williams was eventually able to get Ms. Tillman on the ground, but she  
4 continued to resist being handcuffed. (Williams Dep. 139:16–21, 194:2–12.) Officer Williams  
5 warned her to stop resisting or he would use his Taser. (Branch Dep. 103:6–8, 199:16–19;  
6 Tillman Dep. 182:11–23; Knaack Decl. ¶ 17.) When Officer Williams perceived that Ms.  
7 Tillman was attempting to kick him, he used his Taser on her. (Williams Dep. 139:9–21,  
8 207:19–208:9.) Two other security officers showed up, and one of them handcuffed the  
9 Plaintiffs at the direction of Officer Williams. (Knaack Decl. ¶ 17.) Soon after that, additional  
10 police officers began arriving. (*Id.*)

12 Although the Plaintiffs allege they were discriminated against, race played no role  
13 whatsoever in Security Officer Knaack's decisions or actions that day. (Knaack Decl. ¶ 18.)  
14 The Plaintiffs admitted at their depositions that neither Officer Williams nor Security Officer  
15 Knaack said anything to make them think they were treated differently because of their race.  
16 (Branch Dep. 116:7–15, 202:1–4; Tillman Dep. 210:6–11.)

18 The City of Tacoma, its Police Chief, and Officer Williams all have confirmed that  
19 Officer Williams was acting in his official capacity as a police officer when he stopped the  
20 Plaintiffs and arrested Ms. Tillman. (Dkt. #9, ¶ 2.4 (Tacoma Defendants' Answer);  
21 Grindeland Decl., Ex. I (Chief Ramsdell Dep. 174:25–174:13, 177:8–19); Williams Dep.  
22 170:19–171:3.) The Plaintiffs also admit they understood that Officer Williams was a police  
23 officer. (Branch Dep. 186:2–10; Tillman Dep. 157:12–158:12.) Plaintiffs' police expert  
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26

1 agrees that helping a business owner deal with persons who refuse to leave is part of a police  
2 officer's official duties. (*See* Van Blaricom Dep. 94:20–95:10.)

3 Finally, there's no dispute that Security Officer Knaack was acting in the course and  
4 scope of his employment with Universal throughout the incident. (Dkt. #8, ¶¶ 17.1–17.2.)

### 5 **Causes of Action**

6 In addition to claims against the City of Tacoma Defendants, the Plaintiffs allege that  
7 Simon and Universal were negligent in their hiring, training, or supervision, (Dkt. #1-1,  
8 ¶¶ 15.1–15.3); that Security Officer Knaack committed the torts of battery and false  
9 imprisonment when he pushed Mr. Branch, (*id.*, ¶¶ 8.2, 10.1–10.3); that Simon and Universal  
10 violated the Washington Law Against Discrimination because their acts were “animated” by  
11 Plaintiffs' race, (*id.*, ¶ 16.2); and that Simon and Universal are vicariously liable for Security  
12 Officer Knaack's and Officer Williams' conduct, (*id.*, ¶¶ 17.1–17.4). None of these causes of  
13 action are supported by the evidence.  
14

### 15 **LEGAL AUTHORITY**

16 The Court should grant summary judgment in favor of Simon, Universal, and Security  
17 Officer Knaack, because there are no disputed issues of material fact and all of the Plaintiffs'  
18 claims against these three defendants fail as a matter of law.  
19

#### 20 **A. Summary-judgment standard**

21 Summary judgment shall be granted if there is no genuine dispute as to any material  
22 fact and the movant is entitled to judgment as a matter of law. FRCP 56(a). The moving party  
23 can meet its burden of establishing the absence of a genuine issue of material fact by pointing  
24 out that there is no evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*,  
25  
26



1 477 U.S. 317, 325 (1986). The nonmoving party then must go beyond the pleadings and  
 2 identify facts that show a genuine issue for trial. *Id.* at 324.

3 Although all facts are considered in the light most favorable to the nonmoving party,  
 4 the nonmoving party must do more than raise some metaphysical doubt as to the material facts.  
 5 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). This requires  
 6 more than a scintilla of evidence, and merely colorable and insignificantly probative evidence  
 7 is insufficient to defeat summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
 8 249–51 (1986).  
 9

10 As the Supreme Court has explained, summary judgment “is properly regarded not as  
 11 a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole,  
 12 which are designed to ‘secure the just, speedy and inexpensive determination of every action.’”  
 13 *Celotex*, 477 U.S. at 327 (quoting FRCP 1).  
 14

15 **B. Officer Williams acted in the course and scope of his employment by the City of  
 Tacoma, so Simon and Universal aren’t vicariously liable for his actions.**

16 There’s no evidence to support Plaintiffs’ claim that Simon or Universal are vicariously  
 17 liable for Officer Williams’ actions. First, Officer Williams never worked for Universal in any  
 18 capacity, (Universal’s Dep. 123:13–16), so there’s no basis for the claim that Universal is  
 19 vicariously liable for his conduct.  
 20

21 Second, even though Simon paid Officer Williams and other off-duty officers to  
 22 provide a police presence at the mall, the record shows and the City of Tacoma has  
 23 acknowledged that Officer Williams was acting in the course and scope of his City  
 24 employment during the incident. Simon cannot also be vicariously liable for his actions, as  
 25 “reported decisions impliedly shun a finding of two employers for purposes of vicarious  
 26

1 liability because both employers do not simultaneously control the negligent worker's task that  
 2 led to a plaintiff's injuries." *Wilcox v. Basehore*, 189 Wn. App. 63, 82, 356 P.3d 736 (2015).

3 Moreover, Simon never controlled Officer Williams' work, and the mere hiring of an  
 4 off-duty officer isn't enough to create vicarious liability. The general rule is that a private entity  
 5 isn't responsible for the acts of a police officer, even when the officer is being paid by the  
 6 private entity. *Wheatley v. Wash. Jockey Club*, 39 Wn.2d 163, 165, 234 P.2d 878 (1951)  
 7 (quoting 22 AM. JUR. 385, False Imprisonment § 45 (1939)). "The acts of such a person are,  
 8 prima facie, those of a public officer, not rendering the private employer liable." *Id.* This is  
 9 consistent with traditional agency principles, which treat control as the "crucial factor" in  
 10 distinguishing between an agent and an independent contractor. *See Chapman v. Black*, 49 Wn.  
 11 App. 94, 99, 741 P.2d 998 (1987); *see also* WPI 50.11.01 (Distinguishing Between Agents and  
 12 Independent Contractors). A principal generally is liable for the acts of an agent, but not an  
 13 independent contractor. *DeWater v. State*, 130 Wn.2d 128, 137, 921 P.2d 1059 (1996).  
 14

15 Unlike the employer in *Wheatley*, which apparently didn't contest vicarious liability  
 16 after ordering off-duty officers to arrest a suspect, *see Wheatley*, 39 Wn.2d at 164, neither  
 17 Simon nor Universal controlled any aspect of Officer Williams' work. They didn't train him,  
 18 supervise him, or direct his work. (Williams Dep. 62:17–63:2, 68:18–24, 71:13–72:1; Sadler  
 19 Dep. 69:10–70:2, 75:7–15; Simon's Dep. 19:14–20:12, 31:2–23.) Officer Williams exercised  
 20 his own discretion "to take enforcement action and trespass [Ms. Tillman]." (Williams Dep.  
 21 156:11–14, 156:23–157:6.)  
 22

23 In contrast to the lack of control by Simon or Universal, the Tacoma Police Department  
 24 maintains close control of its officers working off-duty shifts. Its Off-Duty Policy provides  
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 26

1 that the “primary duty, obligation, and responsibility of an employee is to the Tacoma Police  
 2 Department.” (TPD Off-Duty Policy.) Off-duty employment must be approved by the Police  
 3 Department, and off-duty officers are “ultimately responsible to the direction of on-duty TPD  
 4 Supervisors.” (*Id.*) Off-duty officers wear their police uniforms, carry TPD-issued equipment,  
 5 and drive TPD patrol vehicles. (Williams Dep. 58:18–59:6, 61:23–62:2.) They are prohibited  
 6 from performing “tasks other than those of a Police nature while in Police uniform.” (TPD  
 7 Off-Duty Policy.) They carry a police radio and check in with Police Dispatch when they start  
 8 their off-duty shift. (Williams Dep. 37:16–22, 80:1–8.) The officers can be required to leave  
 9 mall property at any time if they are dispatched to calls elsewhere in the city. (TPD Off-Duty  
 10 Policy; Williams Dep. 87:7–23.) In fact, TPD Policy requires off-duty officers to handle all  
 11 violations of the law, even those “that may be committed by the business for which they are  
 12 employed (i.e., code and/or liquor violations).” (TPD Off-Duty Policy.)

14 The City of Tacoma, its Police Chief, and Officer Williams all agree that Officer  
 15 Williams was performing his official duties throughout this incident. His actions that day were  
 16 traditional police functions: responding to a report of trespassing, detaining individuals, and  
 17 making an arrest. *See Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 957 (9th Cir.  
 18 2008) (*en banc*) (“it is generally not a constitutional violation for a public officer to enforce a  
 19 private entity’s rights”); *Mike v. Tharp*, 21 Wn. App. 1, 6, 583 P.2d 654 (1978) (recognizing  
 20 police officers’ function of keeping the peace and authorizing arrests to accomplish that goal).  
 21 Even Plaintiffs’ police expert concedes that officers removing unwanted persons from private  
 22 businesses are performing their official duties. (*See Van Blaricom* Dep. 94:20–95:10.) The  
 23 Plaintiffs themselves testified that when Officer Williams pulled up in his patrol vehicle, turned  
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1 on his lights, and sounded his air horn, there was no doubt in their minds that he was a police  
 2 officer. (Branch Dep. 186:2–187:3; Tillman Dep. 157:20–22.)

3 Officer Williams acted in the course and scope of his City employment and performed  
 4 official duties throughout this incident. Neither Simon nor Universal controlled or directed his  
 5 work in any manner. For all these reasons, Plaintiffs’ claim that Simon or Universal are  
 6 vicariously liable for Officer Williams’ actions fails as a matter of law.

7 **C. Plaintiffs’ claims for negligent hiring, training, and supervision are improper.**

8 Under Washington law, an employer can be liable for negligent hiring, training, or  
 9 supervision only when an employee acts outside the scope of employment. *LaPlant v.*  
 10 *Snohomish County*, 162 Wn. App. 476, 479, 271 P.3d 254 (2011). The claim generally arises  
 11 in situations where the “employee steps aside from the employer’s purposes in order to pursue  
 12 a personal objective of the employee.” *Niece v. Elmview Grp. Home*, 131 Wn.2d 39, 48, 929  
 13 P.2d 420 (1997). It’s based on the employer’s “limited duty to control an employee for the  
 14 protection of a third person.” *LaPlant*, 162 Wn. App. at 479 (citing Restatement (Third) of  
 15 Agency § 7.05 (2006).). When an employee commits a tort within the scope of employment,  
 16 however, “a different theory of liability—vicarious liability—applies.” *Id.* at 479–80. Any  
 17 claim for negligent hiring, training, or supervision is superfluous and “generally improper”  
 18 when employees acted within the course and scope of their employment. *Id.* at 480.

19 That’s the situation here. Plaintiffs’ claim that Universal negligently hired, trained, and  
 20 supervised Security Officer Knaack is superfluous and improper because he was acting in the  
 21 course and scope of his employment by Universal. Similarly, Plaintiffs’ claim that Simon  
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1 negligently hired, trained, and supervised Officer Williams fails, because Officer Williams was  
2 acting in the course and scope of his City employment.

3 Nor does the evidence support the elements of such a claim. To prevail on a negligent  
4 hiring, training, and supervision claim, a plaintiff must show that: (1) the employee acted  
5 outside the scope of employment; (2) the employee presented a risk of harm to others; (3) the  
6 employer knew or should have known that the employee posed a risk to others; and (4) any  
7 failure to adequately screen, train, or supervise the employee was the proximate cause of the  
8 plaintiff's injuries. *LaPlant*, 162 Wn. App. at 479 n.7.  
9

10 With respect to the first element, as already discussed, neither Security Officer Knaack  
11 nor Officer Williams acted outside the scope of their employment by Universal and the City  
12 of Tacoma, respectively. With respect to the second and third elements, there's no evidence  
13 that Security Officer Knaack or Officer Williams presented a risk of harm to others, much less  
14 that their respective employers knew of any such risk. With respect to the fourth element,  
15 there's no evidence and no expert testimony that Security Officer Knaack or Officer Williams  
16 were inadequately screened, trained, or supervised, much less that any such failure was a  
17 proximate cause of harm to the Plaintiffs. The Plaintiffs don't have evidence to support any of  
18 the elements of their claim, and their experts don't have any opinions on this topic.  
19

20 To the extent the Plaintiffs contend Simon should have trained Officer Williams—even  
21 though he was acting in the course and scope of his employment by the City—there was no  
22 such duty. On the contrary, it's objectively reasonable to hire off-duty police officers and to  
23 rely on their training and certification. *See Dean v. City of Buffalo*, 579 F. Supp. 2d 391, 400  
24 (W.D.N.Y. 2008) (rejecting plaintiffs' "bald assertion that the hotel's failure to provide  
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specific training to an experienced and trained city police officer concerning how to deal with unruly hotel guests constitutes a triable claim of negligence”); *Fifth Club, Inc. v. Ramirez*, 196 S.W.3d 788, 797 (Tex. 2006) (defendant’s “status as a certified peace officer made him fit for this type of work”). Officer Williams was a certified police officer, trained and qualified by both the State of Washington and the City of Tacoma. Thus, even if a negligent training claim could be brought against Simon, it would fail as a matter of law because the evidence doesn’t support it.

Plaintiffs’ improper and unsupported claims for negligent hiring, training, and supervision should be dismissed on summary judgment.

**D. Plaintiffs’ battery and false-imprisonment claims fail because it was reasonable to push Mr. Branch back when he approached Officer Williams.**

Washington law allowed Security Officer Knaack to push Mr. Branch back when he approached Officer Williams, and Security Officer Knaack didn’t detain Ms. Tillman in any way, so Plaintiffs’ claims for battery and false imprisonment fail as a matter of law.

Battery is the “intentional infliction of harmful or offensive bodily contact.” *Sutton v. Tacoma Sch. Dist. No. 10*, 180 Wn. App. 859, 865, 324 P.3d 763 (2014). “A bodily contact is offensive if it offends a reasonable sense of personal dignity.” *Id.* (quoting Restatement (Second) of Torts § 19 (1965)). But there’s a privilege to use force to protect another when the facts, as they appear to the protector, create a reasonable apprehension of danger, and the protector believes intervention is necessary to protect the other. *State v. Penn* 89 Wn.2d 63, 66, 568 P.2d 797 (1977). In fact, an individual protecting others is permitted to use the same amount of force those being defended could have used to protect themselves. *Id.*; *see also*

1 Restatement (Second) of Torts § 76 (1965) (defense of others includes privilege to use  
2 reasonable force).

3 False imprisonment occurs when a person is wrongfully deprived of liberty of  
4 movement by physical force or by threat of force. *Moore v. Pay'N Save Corp.*, 20 Wn. App.  
5 482, 486, 581 P.2d 159 (1978). But individuals are permitted to confine others in defense of  
6 themselves or others. Restatement (Second) of Torts § 67 (1965).

7 Security Officer Knaack didn't touch or detain Ms. Tillman at all, so there's no basis  
8 whatsoever for her false-imprisonment claim against him. To the extent Ms. Tillman contends  
9 Security Officer Knaack is liable for using his radio to call for help, that's insufficient, because  
10 "liability will not be imposed when the defendant does nothing more than detail his version of  
11 the facts to a policeman and ask for his assistance, leaving it to the officer to determine what  
12 is the appropriate response." *McCord v. Tielsch*, 14 Wn. App. 564, 566, 544 P.2d 56 (1975).  
13 Ms. Tillman's claim must be dismissed.  
14

15 Mr. Branch's claims also fail, because Security Officer Knaack was privileged to use  
16 reasonable force to prevent him from endangering Officer Williams. Fortunately, both times  
17 Security Officer Knaack touched Mr. Branch were captured on surveillance video. When Mr.  
18 Branch got off his bike, moved toward Officer Williams, and yelled, "Get the fuck off my  
19 sister!", it appeared Mr. Branch was going to assault Officer Williams. Security Officer  
20 Knaack was concerned for the safety of Officer Williams, who already had his hands full trying  
21 to control Ms. Tillman, so Security Officer Knaack grabbed Mr. Branch by the sweatshirt to  
22 hold him back. (Surveillance Video at 1:24–1:30.) Officer Williams then drew his Taser, and  
23 Mr. Branch backed off, sitting down on the nearby pavement. (*Id.* at 1:30–1:45.) When Mr.  
24  
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Branch stood up again, Security Officer Knaack pushed him in the chest to keep him away from Officer Williams. (*Id.* at 1:55–2:05.) Mr. Branch then moved back and sat down again. (*Id.*) Mr. Branch didn’t sustain any physical injuries from either contact. (Branch Dep. 15:4–7.) In fact, it’s likely that Security Officer Knaack’s intervention prevented Mr. Branch from getting himself Tased. The minimal force Security Officer Knaack used to accomplish his lawful objective of protecting Officer Williams was reasonable, so it doesn’t constitute battery or false imprisonment.

Moreover, Mr. Branch was already being detained by Officer Williams, so he didn’t have any liberty of movement for Security Officer Knaack to restrict.<sup>1</sup> In fact, Security Officer Knaack would have done nothing to keep Mr. Branch from leaving, as long as he didn’t endanger Officer Williams. Security Officer Knaack’s only goal was to keep Mr. Branch away from Officer Williams, not to prevent him from leaving the scene.

Security Officer Knaack’s minimal use of force to keep Mr. Branch from endangering Officer Williams was lawful under the circumstances, and Security Officer Knaack didn’t restrict Plaintiffs’ liberty of movement, so Plaintiffs’ battery and false-imprisonment claims fail as a matter of law.

**E. There’s no evidence to support Plaintiffs’ racial-discrimination claim.**

The Plaintiffs lack any evidence to support their claim that Simon’s and Universal’s conduct was “animated in whole or in part” by Plaintiffs’ race in violation of the Washington

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<sup>1</sup> Officer Williams stopped the Plaintiffs because they were trespassing, so he didn’t falsely imprison them either. *See Hanson v. City of Snohomish*, 121 Wn.2d 552, 563, 852 P.2d 295 (1993) (probable cause is a complete defense to false-imprisonment claim against a police officer).



1 Law Against Discrimination. To prove a claim of racial discrimination under Washington law,  
 2 the Plaintiffs must establish: (1) that they are members of a protected class; (2) that the  
 3 establishment is a place of public accommodation; (3) that the Defendants discriminated  
 4 against the Plaintiffs by treating them differently from persons outside the class; and (4) that  
 5 Plaintiffs' protected status was a substantial factor causing discrimination. *Demelash v. Ross*  
 6 *Stores, Inc.*, 105 Wn. App. 508, 525, 20 P.3d 447 (2001); *McKinney v. City of Tukwila*, 103  
 7 Wn. App. 391, 410–11, 13 P.3d 631 (2000).  
 8

9 The Plaintiffs can't establish the third and fourth elements of their claim. There isn't  
 10 any evidence they were treated differently than anyone else who engaged in similar conduct,  
 11 let alone that they were treated differently on account of race. While the Plaintiffs dispute they  
 12 were impeding traffic and swearing at drivers, they admit that when Security Officer Knaack  
 13 initially contacted them, he merely asked them what they were doing and where they were  
 14 going. Ms. Tillman responded by yelling and cursing at him, which constituted another  
 15 violation of the mall's code of conduct, so they were told to leave the property. Instead of  
 16 leaving as directed, she told him to "Fuck off!" as they rode away. It was Plaintiffs' conduct,  
 17 not their race, that led Security Officer Knaack and Officer Williams to act.  
 18

19 During Plaintiffs' depositions, they were asked whether there was anything that made  
 20 them think Security Officer Knaack was motivated by race. Ms. Tillman said, "Just his tone  
 21 when he first came up to me was accusatory, like I had done something wrong or I must have  
 22 done something wrong or I was going to do something wrong. But other than that, no."  
 23 (Tillman Dep. 210:6–11.) To the same question, Mr. Branch said, "No, but we're two black  
 24 kids riding bikes through the mall and we have two white officers stop us, so what else is there  
 25  
 26

1 to think?” (Branch Dep. 116:7–15.) Security Officer Knaack’s alleged “tone” and the mere  
2 fact the Plaintiffs are black aren’t sufficient to support a racial-discrimination claim against  
3 anyone, much less Simon or Universal, so this claim, too, must be dismissed.

4 **CONCLUSION**

5 Because the Plaintiffs don’t have sufficient evidence to support any of their claims  
6 against Simon, Universal, or Security Officer Knaack, the Mall Defendants’ Motion for  
7 Summary Judgment should be granted, and all claims against them should be dismissed.  
8

9 DATED: December 7, 2017

10 **MILLS MEYERS SWARTLING P.S.**  
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12 Simon Property Group, L.P.; and Henry Knaack

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**CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

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Dated this 7th day of December 2017.

*s/Karrie Fielder*

Karrie Fielder